

Information to Parties Interested  
in Making Water Available to  
the Environmental Water Account or  
the State's 2002 Dry Year Water Purchase Program

I. Introduction

The Department of Water Resources (DWR) encourages locally developed water transfers as a way to help meet local water supply needs as well as those of the State and the environment. The purpose of this and related papers is to provide technical guidance to local parties who wish to sell water to the State's 2002 Dry Year Water Purchase Program and the Environmental Water Account (EWA)<sup>1</sup> through water transfers<sup>2</sup>. The focus of these papers is water transfers from areas in the greater Sacramento Valley to areas south and west of the Sacramento-San Joaquin Delta. The detailed aspects of these papers should not be considered to provide technical guidance for other water-source areas. Also, these papers provide parties wishing to conduct similar water transfers not related to these programs with insight into DWR's technical perspective relative to out-of-basin water transfers.

II. Water Transfer Principles

- Local Leadership – DWR recognizes the importance of local leadership in making decisions on how to better manage the State's water resources. Accordingly, DWR will work cooperatively with local water associations, their member agencies, local government and other leaders in the Sacramento Valley and other regions to assure that local interests have the opportunity to manage their resources in a manner that meets local objectives.

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<sup>1</sup> The Environmental Water Account (EWA) is a State and federal program established in the August 2000 CALFED Record of Decision to allow additional environmental protection actions with no uncompensated water or power costs to the water users. The water supply costs of the program are made up in part through water transfers.

<sup>2</sup> The Department of Water Resources (DWR) is coordinating the water purchase aspects of these two programs with the assistance of the U.S. Bureau of Reclamation (USBR) and other State and federal agencies. These papers are presented to facilitate and expedite the contracting process for responsible water transfers and are not intended to have regulatory effect.

- **Assuring Adequate Local Supplies** - Before suppliers are asked to make supplies available for others, there needs to be assurance that such transfers will not adversely affect other water users of the same resources. DWR will work with local water agencies and associations and other local interests in the Sacramento Valley and other regions to assure that supplies are reasonably available to meet local needs in those regions.
- **Locally Developed Programs** - Strategies for making water supplies available need to be locally driven and developed in cooperation with local public leaders. DWR will respect the right of individual local water entities to determine the best way in which local water purveyors can make water available for local, regional, and Statewide use. Such local programs should be in compliance with all applicable laws, including local ordinances. California law recognizes transfers as a beneficial use of water and protects the underlying water rights involved in a transfer.
- **Third Party Impacts** - Water transfers should be designed to avoid injury to other legal users of water and unreasonable effects on the overall economy in the counties from which the water proposed for transfer originates. Water transfer programs need to establish effective mechanisms to ensure that injury to other legal water users is identified and mitigated. In addition, evaluation of possible economic effects of the transfer at the countywide level is needed to identify possible actions to prevent unreasonable economic effects. Administration of these mechanisms should be at the local level and under local control.
- **Environmental Protection** - Actions to develop additional supplies for water users need to be implemented in a manner that is compatible with ongoing environmental protection and restoration programs. Examples of such programs include the CALFED Environmental Water Account, Ecosystem Restoration Program, and Central Valley Project Improvement Act implementation efforts as well as any local actions to protect environmental resources.
- **Statewide Perspective** - In fulfilling its obligations, DWR recognizes that it must represent the interests of all parts of the

State, both those areas needing additional supplies and those that can make supplies available.

### III. Water Customer Issues for DWR

- When DWR is purchasing water through water transfers for either the Dry Year Program or EWA it is a customer looking for a commodity that meets its needs. Like any customer, DWR has a sense of the characteristics of the commodity in which it is interested to purchase. Also, the Legislature has given DWR a set of legal principles that need to be satisfied if DWR is to be involved in the purchase or conveyance of water. These legal principles are discussed later and require DWR to be concerned about the impacts of its water purchases on the water source areas. DWR attempts to address these impacts as it works with parties to either purchase water or enter into agreements to use DWR facilities. This concern about possible local area impacts of water transfer makes DWR an “enlightened consumer” as it enters the water market. This is not much different than outlining the characteristics of an automobile that meets the needs of your family or the quality of the produce you are willing to purchase. Many consumers want these products to be produced in a manner that is as environmentally friendly as possible. DWR has a similar desire with regard to water transfers. This set of water transfer papers is intended to give parties interested in doing water business with DWR, an idea of the characteristics of the water commodity in which it is interested to purchase or convey through its facilities.

### IV. Types of Water Transfers of Greatest Interest to DWR

- Stored Water – Release of stored water that would remain in storage or would be stored in the absence of the water transfer.
- Groundwater Substitution – Reduction in surface water use which is offset with additional groundwater pumping. (See paper titled “Groundwater Substitution Water Transfers – How to Make Them Work in the Sacramento Valley in 2002.”)

- Crop Idling/Crop Shifting – Reduction in surface water use resulting from a reduction in the evapotranspiration of applied water to agricultural crops that would have occurred in the absence of the water transfer. (See paper titled “Crop Shifting/Crop Idling Water Transfers – How to Make Them Work in the Sacramento Valley in 2002.”)

#### V. Types of Water Transfers of Little or No Interest to DWR

- Direct Pumping of Groundwater – Water Code Section 1220 establishes significant barriers to the export of groundwater outside the Sacramento Valley. DWR is not interested in facilitating the direct transfer of groundwater from one area to another.
- Transfers that Injure Legal Users of Water or Cause Unreasonable Effects to the Environment – Water transfers that simply reclassify existing stream flows from one category to another, making these flows no longer available to historic downstream users, have the potential to injure other legal users of water and cause harm to the environment. Water transfers should focus on either making new surface flows available or reducing surface water use in such a way as to expand the availability of surface water resources for use by others.

#### VI. Legal Principles to be Addressed as Part of the Water Transfer Proposal

- Three Principles Related to Water Transfers – California law contains numerous protections<sup>3</sup> that apply to water transfers. However, there are three fundamental principles that typically apply: (1) no injury to other legal users of water, (2) no unreasonable effects to fish, wildlife or other instream beneficial uses of water, and (3) no unreasonable effects on the overall economy or the environment in the counties from which the water is transferred<sup>4</sup>. DWR will not support or participate in any water transfer where these basic principles have not been adequately addressed.

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<sup>3</sup> California Water Code Section 1810 *et seq.* specifies the requirements that must be met in order for DWR and other regional and local agencies to allow use of their conveyance facilities. Also, Water Code Sections 386, 1702, 1706, 1727 and 1736 follow the common law and establish similar requirements for changes in water rights.

<sup>4</sup> Strictly speaking, economic issues are typically only required to be evaluated in water transfers that seek to utilize DWR's water conveyance facilities or those of other State or local agencies. However, economic impacts that are associated with physical changes to the environment may require analysis under the California Environmental Quality Act (CEQA).

- Suggested Methods to Develop Workable Water Transfers – The outline below provides some technical suggestions to assist parties in addressing these principles to develop successful water transfers.
  - No Injury to Legal Users Of Water
    - Determine the water available for transfer based on the conditions that would exist absent the water transfer or the program that makes the transfer water available.
    - Include real-time monitoring programs as a part of the water transfer to trigger corrective actions that help avoid possible impacts as they may develop. This is especially important for groundwater substitution transfers.
    - Include a mitigation program that specifies the actions that will be taken as quickly as may be necessary to prevent injury from occurring.
    - Include reservoir “refill criteria” for storage water transfers as appropriate to protect downstream users from delayed impacts of the water transfer. Refill criteria are developed on a site-specific basis and may be different for water transfers with places of use within, as opposed to those outside, the Sacramento Valley.
  - No Unreasonable Effects on Fish and Wildlife
    - Coordinate with State and federal fishery agencies to help make water available in the most “fish friendly” method possible, to help avoid adverse effects on fish and wildlife due to the water transfer, and when possible to enhance fishery habitat.
    - Disperse any cropping land use changes and avoid actions that affect critical habitat of sensitive fish and wildlife species.
    - Include monitoring programs as may be needed to implement adaptive management efforts to mitigate potential impacts on fish and wildlife.

- Adhere to established operational limits in existing permits and licenses.
- No Unreasonable Effects on the Overall Economy in the Counties from which the Water is Transferred<sup>5</sup>
  - Limit the scope and extent of actions that can affect the local economy.
  - Recognize that investment of local income from water transfers typically goes back into normal business operations and improvements of local water supply systems.
  - Work with the transferring water district, and, as necessary, county government representatives to help identify actions that may become necessary if the cumulative economic effects of water transfers in those counties appear to DWR to reach unreasonable levels.

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<sup>5</sup> If public wheeling facilities are not utilized, Water Code Section 1810, *et seq.* does not apply, but this issue should still be addressed at the local level. Also, see footnotes 3 and 4.

## VII. Developing a Water Transfer Proposal

- Parties are encouraged to work with local water agencies and districts to develop joint water transfer proposals capable of providing substantial quantities of water.
- Parties may wish to seek the advice of an attorney and a professional engineer in developing the water transfer proposal.
- The amount of water made available for transfer by the seller is determined at the most downstream point of control of the seller. Losses beyond this point are not a concern to the seller and will be determined for possible buyers by DWR in cooperation with USBR.

## VIII. Price

- The price to the seller will be negotiated on a per acre-foot or per acre basis. The price will be based in part on the costs of making the water available and the prospective buyer's willingness to pay.
- Options may be available depending on the mutual interests of the buyers and the sellers. The price of the option paid to the seller will be negotiated and is typically small, paid early and non-refundable except in limited circumstances. The total price of the water if "called" will include the option price as a down payment. "Call dates" for options are negotiable but should balance the needs of prospective buyers and the sellers.

## IX. Environmental Documentation

- Parties are encouraged to complete their own environmental documentation of the water transfer proposal in compliance with the California Environmental Quality Act (CEQA). The document needs to cover issues in a manner that allows DWR to use this document as a "Responsible Agency" under CEQA. CEQA exemptions should be evaluated and used when appropriate. Parties are encouraged to develop these documents in consultation with DWR.

- Parties that do not prepare their own CEQA documentation need to provide adequate information to enable DWR to complete CEQA compliance.
- Proposals reliant upon the use of federal facilities and approvals by USBR may require completion of National Environmental Policy Act (NEPA) documentation prior to approval by the United States.

X. Water Right Changes

- Depending on the location of the possible buyers, temporary changes in water right permits may be needed for some water transfers. Parties are encouraged to contact DWR for assistance in determining the types and scope of water right actions that may be needed. Individual water right holders are responsible for obtaining changes to water rights from the State Water Resources Control Board (SWRCB) as needed. For those parties entering into contracts as part of the State's Dry Year Program or EWA, DWR and USBR are willing to use the flexibility under their water rights to accommodate the water transfer. This accommodation will be consistent with the water right permits of DWR and USBR, their water supply contracts and State and federal law and policies.

XI. Protection of Water Rights

- DWR wants to ensure that the water rights of parties to the transfer are not adversely affected if they decide to enter into a water transfer agreement. California law protects the underlying surface water rights of parties who wish to transfer a portion of their surface water supply to others. In some cases certain reports to regulatory agencies are needed to ensure protection of these rights. DWR's water purchase agreements expressly recognize the legal protections afforded the seller's underlying water rights in a water transfer. Additional information about water rights protection and water transfers is available in a SWRCB staff document titled "A Guide to Water Transfers" available from the SWRCB at their water rights web site at [www.waterrights.ca.gov](http://www.waterrights.ca.gov) under water transfer information.

XII. Water Transfer Proposals



- Parties interested in making water available to EWA or the State's Dry Year Water Purchase Program are encouraged to develop a proposal using the information set forth in this paper and the companion documents. Proposals, contract negotiations and CEQA documentation need to be completed in the January through March timeframe to allow implementation by April wherever possible. Parties interested in developing water transfers are also encouraged to contact one of the individuals identified below for assistance as needed.

### XIII. Contacts

- Teresa Geimer – State Water Project Analysis Office - DWR  
(916) 653-4547
- Jerry Johns – Water Transfers Office - DWR  
(916) 651-7054